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Air Pollution Regulations in State Implementation Plans: Vermont

Abcor Inc, Wilmington, MA Walden Div

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Environmental Protection Agency, Research Triangle Park, NC

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Office of Air Quality
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Research Triangle Park NC 27711

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Air Pollution Regulations in State Implementation Plans: Vermont

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This document has been produced in compliance with Section 110(h)(1) of the Clean Air Act amendments of 1977. The Federally enforceable regulations contained in the State Implementation Plans (SIPs) have been compiled for all 56 States and territories (with the exception of the Northern Mariana Islands). They consist of both the Federally approved State and/or local air quality regulations as indicated in the Federal Register and the Federally promulgated regulations for the State, as indicated in the Federal Register. Regulations which fall into one of the above categories as of January 1, 1978, have been incorporated. As mandated by Congress, this document will be updated annually. State and/or local air quality regulations which have not been Federally approved as of January 1, 1978, are not included here; omission of these regulations from this document in no way affects the ability of the respective Federal, State, or local agencies to enforce such regulations.

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Air Pollution Regulations in State Implementation Plans:

Vermont

by

Walden Division of Abcor, Inc.
Wilmington, Massachusetts

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EPA Project Officer: Bob Schell

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U.S. ENVIRONMENTAL PROTECTION AGENCY
Office of Air, Noise, and Radiation
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

August 1978

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Publication No. EPA-450/3-78-095

INTRODUCTION

This document has been produced in compliance with Section 110(h)(1) of the Clean Air Act Amendments of 1977. The Federally enforceable regulations contained in the State Implementation Plans (SIPs) have been compiled for all 56 States and territories (with the exception of the Northern Mariana Islands). They consist of both the Federally approved State and/or local air quality regulations as indicated in the Federal Register and the Federally promulgated regulations for the State, as indicated in the Federal Register. Regulations which fall into one of the above categories as of January 1, 1978, have been incorporated. As mandated by Congress, this document will be updated annually. State and/or local air quality regulations which have not been Federally approved as of January 1, 1978, are not included here; omission of these regulations from this document in no way affects the ability of the respective Federal, State, or local agencies to enforce such regulations.

There have been recent changes in the Federal enforceability of parking management regulations and indirect source regulations. The October, 1977, appropriation bill for EPA prohibited Federal enforcement of parking management regulations in the absence of specific Federal authorizing legislation. Federally promulgated parking management regulations have, therefore, been suspended indefinitely. Pursuant to the 1977 Clean Air Act Amendments, indirect source regulations may not be required for the approval of a given SIP. Consequently, any State adopted indirect source regulations may be suspended or revoked; State adopted indirect source regulations contained in an applicable SIP are Federally enforceable. More importantly, EPA may only promulgate indirect source review regulations which are specific to Federally funded, operated, or owned facilities or projects. Therefore, the Federally promulgated indirect source regulations appearing in this document are not enforceable by EPA except as they relate to Federal facilities.

Since State air quality regulations vary widely in their organization, content, and language, a standardized subject index is utilized in this document. Index listings consist of both contaminant and activity oriented categories to facilitate usage. For example, for regulations which apply to copper smelters, one might look under sulfur compounds (50.2), particulate matter process weight (50.1.1), or copper smelters (51.15). Federal regulations pertaining to a given State immediately follow the approved State and local regulations.

Additionally, a summary sheet of the information included in each comprehensive document is presented prior to the regulatory text to allow one to quickly assess the contents of the document. Specifically, the summary sheets contain the date of submittal to EPA of each revision

to the SIP and the date of the Federal Register in which the revision was either approved or disapproved by EPA. Finally, a brief description or reference of the regulation which was submitted is also included.

This document is not intended to provide a tool for determining the enforceability of any given regulation. As stated above, it is intended to provide a comprehensive compilation of those regulations which are incorporated directly or by reference into Title 40, Part 52, of the Code of Federal Regulations. Consequently, the exclusion of a Federally approved regulation from this document does not diminish the enforceability of the regulation. Similarly, the inclusion of a given regulation (for example, regulations governing pollutants, such as odors, for which there is no national ambient air quality standards) in this document does not, in itself, render the regulation enforceable.

SUMMARY SHEET

OF

EPA-APPROVED REGULATION CHANGES

VERMONT

Submittal Date	Approval Date	Description
1/29/72	5/31/72	Plan Regs., Appendix B
5/19/72	5/31/72	Rule 5-412, 5-466, 5-467, 5-481, 5-486, 5-487, 5-488
11/30/73	3/22/76	Rule 5-231:2a, 2b
3/3/75	1/21/76	Rule 5-101:42, 5-103:5a, 5-231:3a(4)
7/19/76	2/4/77	Rule 5-221:1b, 5-231:2a, 2c, 3a(2), 5-303:3a

FEDERAL REGULATIONS

Section Number	Description
52.2374	Public Availability of Emissions Data
52.2377	Regulation for the Review of New and Modified Indirect Sources
52.2380	Regulation for the Prevention of Significant Deterioration

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STATE AIR POLLUTION REGULATIONS

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AIR POLLUTION CONTROL
Title 10 Vermont Statutes Annotated
Chapter 15 Nos. 351-370

(2.0) Sec. 351. Declaration of policy and purpose

(a) It is hereby declared to be the public policy of this state and the purpose of this chapter to achieve and maintain such levels of air quality as will protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state and facilitate the enjoyment of the natural attractions of this state.

(b) It is also declared that local and regional air pollution control programs are to be supported to the extent practicable as essential instruments for the securing and maintenance of appropriate levels of air quality.

(c) To these ends it is the purpose of this chapter to provide for a coordinated statewide program of air pollution prevention, abatement and control, for an appropriate distribution of responsibilities among the state and local units of government, and to facilitate cooperation across jurisdictional lines in dealing with problems of air pollution not confined within single jurisdictions, and to provide a framework within which all values may be balanced in the public interest.

(1.0) Sec. 352. Definitions
As used in this chapter:

(1) "Agency" means the agency of environmental conservation.

(2) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

(3) "Air pollution" means the presence in the outdoor atmosphere of one or more contaminants in such quantities and duration as is or tends to be injurious to human health or welfare, animal or plant life, or property; in accordance with the establishment of ambient air quality standards for the state as a whole or any part thereof, based on nationally recognized criteria applicable to the State of Vermont.

(4) "Board" means the air quality variance board.

(5) "Emission" means a release into the outdoor atmosphere of air contaminants.

(6) "Person" shall mean an individual, partnership, corporation, association, unincorporated organization, trust or any other legal of commercial entity, including a joint venture or affiliated ownership. The word "person" also means a municipality or state agency.

(7) "Secretary" means the secretary of the agency of environmental conservation or such person as the secretary may designate.

(2.0) Sec. 353. Agency and Board

(a) The agency is designated as the air pollution control agency for the state. The secretary or his duly designated representative, within the agency, shall perform the functions vested in the agency, as specified in the following sections of this chapter.

(b) An air quality variance board shall be appointed by the Governor, with the advice and consent of the Senate. The board shall consist of five members, none of whom is otherwise employed by the State. The board shall consist of a lawyer, a manufacturer, a professional engineer, a businessman and a member representing the public at large. The Governor shall designate the Chairman. The terms of office shall be five years except that the initial members shall be appointed so that the term of one member shall expire in each of the succeeding five years.

(2.0) Sec. 354. Powers

In addition to any other powers conferred on it by law the (Secretary) shall have power to:

(1) Appoint and employ personnel and consultants as may be necessary for the administration of this chapter.

(2) Adopt, amend and repeal rules, implementing the provisions of this chapter.

(3) Hold hearings related to any aspect of or matter in the administration of this chapter, and in connection therewith, subpoena witnesses and the production of evidence.

(4) Issue orders as may be necessary to effectuate the purposes of this chapter and enforce the same by all appropriate administrative and judicial proceedings.

(5) Prepare and develop a comprehensive plan or plans for the prevention, abatement and control of air pollution in this state.

(6) Encourage voluntary cooperation by persons and affected groups to achieve the purposes of this chapter.

(7) Encourage local units of government to handle air pollution problems within their respective jurisdiction, and by compact on a cooperative basis, and to provide technical and consultative assistance therefor.

(8) Encourage and conduct studies, investigations and research relating to air contamination and air pollution and their causes, effects, prevention, abatement and control.

(9) Determine by appropriate means the degree of air contamination and air pollution in the state and the several parts thereof.

(10) Make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere of this state and the several parts thereof, and make recommendations to appropriate public and private bodies with respect thereto.

(11) Establish ambient air quality standards for the state as a whole or for any part thereof, based on nationally recognized criteria applicable to the State of Vermont.

(12) Collect and disseminate information and conduct educational and training programs relating to air contamination and air pollution.

(13) Advise, consult, contract and cooperate with other agencies of the state, local governments, industries, other states, interstate or interlocal agencies, and the federal government, and with interested persons or groups.

(14) Consult, upon request, with any person proposing to construct, install, or otherwise acquire an air contaminant source or device or system, for the control thereof, concerning the efficacy of the device or system, or the air pollution problem which may be related to the source, device or system. Nothing in any consultation shall be construed to relieve a person from compliance with this chapter, rules in force pursuant thereto, or any other provision of law.

(15) Accept, receive and administer grants or other funds or gifts from public and private agencies, including the federal government, for the purpose of carrying out any of the functions of this chapter. The funds received by the Secretary pursuant to this section shall be deposited in the state treasury to the account of the Secretary.

(16) Have access to records relating to emissions which cause or contribute to air contamination.

(13.0) Sec. 355. Classification and reporting

(a) The Secretary, by rule, may classify air contaminant sources which in its judgment may cause or contribute to air pollution, according to levels and types of emissions and other characteristics which relate to air pollution, and may require reporting by any class. Classifications made pursuant to this subsection may apply to the state as a whole or to any designated area of the state, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property.

(b) Any person operating or responsible for the operation of air contaminant sources of any class for which the rules of the Secretary require reporting shall make reports containing information as required by the Secretary concerning location, size and height of contaminant outlets, processes employed, fuels used and the nature and time periods of duration of emissions, and such other information relevant to air pollution and available or reasonably capable of being assembled.

(2.0) Sec. 356. Additional contaminant control measures

(a) The Secretary may require that notice be given to it prior to the undertaking of the construction or installation of particular types or classes of new air contaminant sources specified in its rules and regulations. Within fifteen days of its receipt of the notice, the Secretary may require, as a condition precedent to the construction or installation or establishment of the air pollution source or sources covered thereby, the submission of plans, specifications, and other information as it deems necessary in order to determine whether the proposed construction or installation will be in accord with applicable rules in force pursuant to this chapter. Within thirty days of the receipt of plans, specifications or other information required pursuant to this section the Secretary shall determine if the proposed construction or installation is in accord with the requirements of this chapter or applicable rules and shall issue an order approving or prohibiting the construction or installation or establishment of the air contaminant source or sources, or give approval upon fulfillment of specified conditions. Failure of such an order to issue within the time prescribed herein shall be deemed a determination that the construction, installation or establishment may proceed provided that it is in accordance with the plans, specifications or other information, if any, required to be submitted.

(b) In addition to other remedies available on account of the issuance of an order prohibiting construction or installation and prior to invoking any remedies, the person or persons aggrieved thereby shall, upon request in accordance with rules of the Secretary be entitled to a hearing on the order. Following such hearing, the order may be affirmed, modified or withdrawn.

(c) For the purposes of this chapter, addition to or enlargement or replacement of an air contaminant source, or any major alteration therein, shall be construed as construction or installation of a new air contaminant source.

(d) All facilities or parts thereof called for by plans, specifications or other information submitted pursuant to subsection (a) of this section shall be maintained in good working order.

(e) Nothing in this section shall be construed to authorize the Secretary to require the use of a facility available only from a particular supplier or produced by a particular manufacturer.

(f) The absence or failure to issue a rule or order pursuant to this section shall not relieve any person from compliance with any emission control requirements or with any other provision of law.

(2.0) Sec. 357. Inspections

Any duly authorized officer, employee, or representative of the Secretary many enter and inspect any property, premise or place on or at which an air contaminant source is located or is being constructed or installed at any reasonable time for the purpose of ascertaining the state

of compliance with this chapter and rules in force pursuant thereto. No authorized person shall refuse entry or access to any authorized representative of the Secretary who requests entry for purposes of inspection and who presents appropriate credentials; nor shall any person obstruct, hamper or interfere with the inspection. If requested, the owner or operator of the premises shall receive a report setting forth all facts found which relate to compliance status.

(2.0) Sec. 358. Emission control requirements

The Secretary may establish such emission control requirements, by rule, as in its judgment may be necessary to prevent, abate, or control air pollution. The requirements may be for the state as a whole or may vary from area to area, as may be appropriate to facilitate accomplishment of the purposes of this chapter, and in order to take necessary or desirable account of varying local conditions.

(15.0) Sec. 359. Enforcement

(a) Whenever the Secretary has reason to believe that a violation of any provision of this chapter or rule pursuant thereto has occurred, it may cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this chapter or rule alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order that necessary corrective action be taken within a reasonable time. The order shall become final unless, no later than thirty days after the date the notice and order are served, the person or persons named therein request in writing a hearing before the Secretary. Upon receipt of the request, the Secretary shall hold a hearing. In lieu of an order, the Secretary may require that the alleged violator or violators appear before the Secretary for a hearing at a time and place specified in the notice and answer the charges complained of, or the Secretary may initiate action pursuant to section 367 of this title.

(b) If, after a hearing held pursuant to subsection (a) of this section, the Secretary finds that a violation or violations have occurred, it shall affirm or modify its order previously issued, or issue an appropriate order or orders for the prevention, abatement or control of the emissions involved or for the taking of such other corrective action as may be appropriate. If, after hearing on an order contained in a notice the Secretary finds that no violation is occurring, it shall rescind the order. Any order issued as part of a notice or after hearing may prescribe a time schedule for necessary action in preventing, abating or controlling the emissions.

(c) Nothing in this chapter shall prevent the Secretary from making efforts to obtain voluntary compliance through warning, conference or any other appropriate means.

(d) In connection with any hearing held pursuant to this section, the Secretary shall have power and upon application by any party it shall have the duty to subpoena witnesses and the production of evidence on behalf of all parties.

(8.0) Sec. 360. Emergency procedure

(a) Any other provisions of law to the contrary notwithstanding, if the Secretary finds that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, with the concurrence of the Governor, the Secretary shall order persons causing or contributing to the air pollution to reduce or discontinue immediately the emission of air contaminants and such order shall fix a place and time not later than twenty-four hours thereafter for a hearing to be held before the Director. Not more than twenty-four hours after commencement of such a hearing and without adjournment thereof, the director shall affirm, modify or set aside the order.

(b) In the absence of a generalized condition of air pollution of the type referred to in subsection (a) of this section, if the Secretary finds that emissions from the operation of one or more air contaminant sources is causing the imminent danger to human health or safety, the Director of Industrial Hygiene may order the person or persons responsible for the operation or operations in question to reduce or discontinue emissions immediately, without regard to the provisions of section 359 of this title. In that event, the requirements for hearing and affirmance, modification or setting aside of orders set forth in subsections 359 (a) and 359 (b) shall apply.

(c) Nothing in this section shall be construed to limit any power which the Governor or any other officer may have to declare an emergency and act on the basis of such declaration.

(5.0) Sec. 361. Variance

(a) A person who owns or is in control of any plant, building, structure, process or equipment may apply to the Secretary for a variance from its rules. The Secretary may grant a variance if it finds that:

(1) The emissions occurring or proposed to occur do not endanger or tend to endanger human health or safety.

(2) Compliance with the rules from which variance is sought would produce serious hardship without equal or greater benefits to the public.

(b) No variance shall be granted pursuant to this section except after public hearing on due notice and until the Secretary has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public.

(c) Any variance or renewal thereof shall be granted within the requirements of subsection (a) of this section and for time periods and under conditions consistent with the reasons therefore, and within the following limitations:

(1) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement or control of the air pollution involved, it shall be only until the necessary practicable means for prevention, abatement or control become

known and available, and subject to the taking of any substitute or alternate measures that the Secretary may prescribe.

(2) If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as, in the view of the Secretary is requisite for the taking of the necessary measures. A variance granted on the ground specified herein shall contain a time schedule for the taking of action in an expeditious manner and shall be conditioned on adherence to the time schedule.

(3) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in items 1 and 2 of this subparagraph, it shall be for not more than one year.

(d) Any variance granted pursuant to this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the Secretary on account of the variance, no renewal thereof shall be granted, unless following public hearing on the complaint on due notice, the Secretary finds that renewal is justified. No renewal shall be granted except on application therefor. The application shall be made at least sixty days prior to the expiration of the variance. Immediately upon receipt of an application for renewal the Secretary shall give public notice of the application in accordance with rules of the Secretary.

(e) A variance or renewal shall not be a right of the applicant or holder thereof but shall be in the discretion of the Secretary. However, any person adversely affected by a variance of renewal granted by the Secretary may obtain judicial review thereof by a proceeding in the appropriate court.

(f) Nothing in this section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of section 360 of this chapter to any person or his property.

(16.0) Sec. 362. Hearings and judicial review

(a) No rule or regulation and no amendment or repeal thereof shall take effect except after public hearing. The Secretary shall appoint a time and place for the hearing and shall order the publication of the substance thereof and of the time and place of hearing two weeks successively in the daily newspapers of the state, the last publication to be at least seven days before the day appointed for the hearing.

(b) Nothing in this section shall be construed to require a hearing before issuance of an emergency order pursuant to section 360 of this chapter.

(c) Any person aggrieved by any order of the Secretary may have judicial review thereof by appeal under Section 2382 of title 12 within thirty days of the date of the order.

(9.0) Sec. 364. Local air pollution control programs

(a) A municipality may establish and thereafter administer within its jurisdiction an air pollution control program which:

(1) Provides by ordinance or local law for requirements compatible with, or stricter or more extensive than those imposed by sections 358, 360, and 361 of this chapter and regulations issued thereunder;

(2) Provides for the enforcement of such requirements by appropriate administrative and judicial process;

(3) Provides for administrative organizations, staff, financial, and other resources necessary to effectively and efficiently carry out its program; and

(4) Is approved by the Secretary as adequate to meet the requirements of this chapter and any applicable rules and regulations pursuant thereto.

(b) A municipality may administer all or part of its air pollution control program in a compact if the program meets the requirements of subsection (a) of this section.

(c) If an approved local air pollution authority so petitions and the Secretary finds that the control of a particular class of air contaminant source because of its complexity or magnitude is beyond the reasonable capability of the local air pollution control authorities or may be more efficiently and economically performed at the state level, it may assume and retain jurisdiction over that class of air contaminant source. Classifications pursuant to this paragraph may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.

(d) Nothing in this chapter shall be construed to supersede or oust the jurisdiction of any local air pollution control program in operation on July 1, 1968; provided that within two years from such date any such program shall meet all requirements of this chapter for a local air pollution control program. Any approval required from the Secretary shall be deemed granted unless the Secretary takes specific action to the contrary.

(2.0) Sec. 365. State and federal aid

Local air pollution control agencies established or approved pursuant to this chapter may make application for, receive, administer and expend federal funds for the control of air pollution or the development and administration of programs related to air pollution control, provided the application is first submitted to and approved by the State Board of Health. The State Board of Health shall approve the application if it is consistent with this chapter and any other applicable requirements of law.

(12.0) Sec. 366. Motor vehicle pollution

(a) The Secretary in conjunction with the motor vehicle department

may provide rules for the control of emissions from motor vehicles. Such rules may prescribe requirements for the installation and use of equipment designed to reduce or eliminate emissions and for the proper maintenance of the equipment and the vehicles. Rules pursuant to this section shall be consistent with provisions of federal law, if any, relating to control of emissions from the vehicles concerned and shall not require, as a condition precedent to the initial sale of a vehicle or vehicular equipment, the inspection, certification or other approval of any feature or equipment designed for the control of emissions from motor vehicles, if the feature or equipment has been certified, approved, or otherwise authorized pursuant to federal law.

(b) Except as permitted or authorized by law, no person shall fail to maintain in good working order or remove, dismantle or otherwise cause to be inoperative any equipment or feature constituting an operational element of the air pollution control system or mechanism of a motor vehicle and required by rules pursuant to this chapter to be maintained in or on the vehicle. Any failure to maintain in good working order or removal, dismantling or causing of inoperability shall subject the owner or operator to suspension or cancellation of the registration for the vehicle by the motor vehicle department. The vehicle shall not thereafter be eligible for registration until all parts and equipment constituting operational elements of the motor vehicle have been restored, replaced or repaired and are in good working order.

(c) The Secretary shall consult with the motor vehicle department and furnish it with technical information, including testing techniques, standards and instructions for emission control features and equipment.

(d) When rules have been issued requiring the maintenance of features or equipment in or on motor vehicles for the purpose of controlling emissions therefrom, no motor vehicle shall be issued an inspection sticker unless all required features or equipment have been inspected in accordance with the standards, testing techniques and instructions furnished pursuant to subsection (b) hereof and has been found to meet those standards.

(e) The remedies and penalties provided here apply to violations of section 366 and provision of section 367 of this title shall not apply.

(f) As used in this section "motor vehicle" shall have the same meaning as defined in section 4 of title 23.

(15.0) Sec. 367. Penalties

Any person who violates a provision of this chapter, except sections 353 and 356 or any rule shall be fined not to exceed $2,000.00.

In the event such violation is of any of the terms and conditions of an order of the Secretary issued under section 359 of this chapter, the expiration of each 30-day period after the expiration of the reasonable time specified in that order during which corrective action must be taken shall constitute a separate violation under this section. In the event such violation is of any of the terms and conditions of an order of the

Secretary issued under section 360 of this title, the expiration of each five-day period after the effective date of that order shall constitute a separate violation under this section.

(2.0) Sec. 368. Limitations

Nothing in this chapter shall be construed to:

(a) Affect the relations between employers and employees with respect to or arising out of any condition of air contaminaiton or air pollution.

(b) Supersede or limit the applicability of any law or ordinance relating to sanitation, industrial health or safety.

(c) Grant to the director any jurisdiction or authority with respect to air contamination existing solely within commercial and industrial plants, works or shops or private property appurtenant thereto.

(2.0) Sec. 369. Exemption from taxation

Approved air pollution treatment facilities shall be exempted from real and personal property taxation in the same manner provided tax exemption of water treatment facilities under the provisions of section 3802 of title 32.

(2.0) Sec. 370. Construction with other laws

When a person as defined in section 352, subsection 4, is required to abate a source of air pollution existing at the date of passage of this chapter and to concurrently abate a source of water pollution in accord with any existing Vermont water resources board's classification order document issued pursuant to sections 902-908 of title 10, water pollution control, the Secretary, the Vermont water resources board and the person or their designated representatives shall meet and establish a properly coordinated program for the abatement of air and water pollution sources concurrently or in sequence. Such program shall specify a reasonable time within which facilities for abatement shall be in use, having regard for the rights and interests of the general public, and reasonableness and equity of the cost of installation of the pollution abatement devices. New sources of air pollution notwithstanding are subject to abatement.

(2.0) Sec. 371. Exemption; steam locomotives and engines

The provisions of this chapter shall not apply to any steam locomotives, engines and rolling stock used in connection with the operation of a railroad within the state.

AGENCY OF ENVIRONMENTAL CONSERVATION
Montpelier, Vermont

ENVIRONMENTAL PROTECTION
REGULATIONS

Chapter 5

AIR POLLUTION CONTROL

SUBCHAPTER I. DEFINITIONS

(1.0) 5-101 As used in this part, all terms not defined herein shall have the meaning given them in the Act.

1. "Act" refers to the Air Pollution Control Act, 10 VSA 15, as amended.

2. "Agency" means the Agency of Environmental Conservation.

3. "Air Contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

4. "Air Pollution" means the presence in the outdoor atmosphere of one or more air contaminants in such quantities, and duration as is or tends to be injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life, or property, in accordance with the establishment of ambient air quality standards for the state as a whole or any part thereof, based on nationally recognized criteria applicable to the State of Vermont.

5. "Emission" means a release into the outdoor atmosphere of air contaminants.

6. "Secretary" means the Secretary of the Agency of Environmental Conservation or such person as the Secretary may designate.

7. "Air Pollution Control Officer" means the person whose functional responsibility is to direct and coordinate the air pollution control activities and program for the State.

8. "Natural wood" - for the purposes of these regulations, natural wood means trees, including logs, boles, trunks, branches, limbs, and stumps, lumber including timber, logs or slabs, especially when dressed for use. This definition shall also include pallets which are used for the shipment of various materials so long as such pallets are not chemically treated with any preservative, paint, or oil. This definition shall not extend to materials which have resulted from the demolition of any building, or to other wood products such as sawdust.

9. "Person" means any individual, or group of individuals organized for fraternal or any other purpose, partnership, firm, association, municipality, public or private corporation, state agency or subdivision of the state, or any other legal entity.

10. "Combustion products" - particulate and gaseous contaminants created by the burning of any kind of material.

11. "Open burning" - the burning of any type of combustible material in the open where the products of combustion are emitted directly into the atmosphere without passing through a stack, chimmney, or other enclosure. Burning shall include ignition, permitting or causing ignition and suffering, allowing or maintaining burning.

12. "Refuse" - garbage, rubbish and trade wastes.

13. "Garbage" - waste resulting from distribution, preparation and serving of food.

14. "Rubbish" - Solids or liquids not considered to be highly flammable or explosive, such as, but not limited to, paper, rags, ashes, leaves, tree branches, yard trimmings, furniture, tin cans, glass, crockery, demolition wastes, junk automobiles, tires, automotive parts, paints, oils, and other similar materials.

15. "Trade waste" - combustible solid or liquid material resulting from construction, building operations, or the prosecution of any business, trade or industry, such as, but not limited to, plastic, rubber, leather, chemicals, cartons, paints, greases, oils, other petroleum products, sawdust, dead animals (including fish and fowl), and other forms of solid or liquid waste materials.

16. "Forest Land Area" - is at least 25 acres of land that is at least 10% stocked with trees of any size.

17. "Ringlemann Chart" - the chart published and described in U. S. Bureau of Mines Information Circular 8333 (May, 1967), and on which are illustrated graduated shades of grey for use in estimating the light obscuring capacity of smoke.

18. "Fuel" - any form of combustible matter - solid, liquid or gas, excluding combustible refuse.

19. "Sulfur compounds" - all organic or inorganic chemicals having an atom or atoms of sulfur in their chemical structure.

20. "Particulate Matter" is any material, except uncombined water, that exists in a finely divided form as a liquid or solid at standard condition.

21. "Combustion Contaminants" are particulate matter discharged into the atmosphere from the burning of any kind of material containing carbon in a free or combined state.

22. "Process Operations" means any method, form, action, operation, or treatment of manufacturing or processing, and shall include any storage or handling of materials or products before, during or after manufacturing or processing.

23. "Process Unit" refers to reactions where raw materials undergo chemical and/or physical change.

24. "Process Weight" is the total weight of all materials introduced into any specific process which may cause discharge into the atmosphere. Solid fuels charged will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not. "THE PROCESS WEIGHT PER HOUR" will be derived by dividing the total process weight by the number of hours in a complete operation from beginning of any given process to the completion thereof, excluding any time during which the equipment is idle.

25. "Fugitive Particulate Matter" means any particulate matter generated by a process operation which is emitted into the open air from points other than a stack outlet.

26. "Incinerator" is any structure or furnace in which combustion takes place, the primary purpose of which is the reduction in volume and weight of an unwanted material.

27. "Multiple Chamber Incinerator" is any article, machine, equipment, contrivance, structure or part of a structure used to dispose of combustible refuse by burning, consisting of three or more refractory lined combustion furnaces in series, physically separated by refractory walls interconnected by gas passage ports or ducts and employing adequate design parameters necessary for maximum combustion of the material to be burned.

28. "BTU" means British Thermal Units, which is the amount of heat necessary to raise the temperature of one pound of water from 39°F to 40° F.

29. "Heat Input" shall be the aggregate heat content of all fuels whose products of combustion pass through a stack or stacks. The heat input value used shall be the equipment manufacturer's or designer's guaranteed maximum input, whichever is greater. The total heat of all fuel burning units on a plant or premises shall be used for determining the maximum allowable amount of particulate matter which may be emitted.

30. "Odor" means that property of gaseous, liquid or solid materials that elicit a physiologic response by the human sense of smell.

31. "Stationary Source" means any building, structure, facility or installation which emits or may emit any air pollutant.

32. "Modification" means any physical change in, or change in the method of operation of, an affected facility which increases the amount of any air pollutant (to which a standard applies) emitted by such facility or which results in the emission of any air pollutant (to which a standard applies) not previously emitted except that:

a. Routine maintenance, repair, and replacement shall not be considered physical changes.

b. The following shall not be considered a change in the method of operation:

(1) an increase in the production rate, if such increase does not exceed the operating design capacity of the affected facility.

(2) an increase in the operation hours.

(3) change in the equipment, or raw materials with no increase in the amount of pollutants.

33. "Ambient Air Space" means the unconfined space occupied by the atmosphere above the geographic area of the State of Vermont.

34. "Annual Average" - a mean value arithmetic or geometric as indicated determined for a period of 12 consecutive months which need not coincide with the calendar year.

35. "Arithmetic Mean" - the sum of N factors divided by N.

36. "N" - the number of factors used in determining an arithmetic or geometric mean.

37. "Geometric Mean" - the Nth root of the product of n factors (e.g. 3x4x5x6=360. The 4th root of 360 = 4.35+).

38. "Standard" means a delineation of the maximum concentration and duration of a specific contaminant, alone or in conjunction with other contaminants in the ambient air space which is deemed compatible with man's health and welfare.

39. "Motor Vehicle" shall include all vehicles propelled or drawn by power other than muscular power, except tractors used entirely for work on the farm, vehicles running only on stationary rails or tracks, motorized highway building equipment and road making appliances.

42. "Public Notice" - Notice given to the public by prominent advertisement in the State announcing the date(s), time(s) and place(s) of public hearings as required in the code of Federal Regulations, CFR Title 40, Part 51.4. Notice shall be given at least 30 days prior to the date of such hearings.

SUBCHAPTER II. PROHIBITIONS

(51.13) 5-201 OPEN BURNING PROHIBITED

No person shall engage in open burning of refuse except in conformity with the provisions of Section 5-202.

(51.13) 5-202 PERMISSIBLE OPEN BURNING

When not prohibited by local ordinances or officials having jurisdiction such as local, state or federal fire wardens or other fire prevention officials, the following types of burning are permissible, provided no public or private nuisance is created.

1. Fires in conjunction with holiday and festive celebrations.

2. Campfires, outdoor grills, and fireplaces for recreation or preparing food.

3. Burning of solid or liquid fuels or structures for the purpose of bona fide instruction and training of municipal, volunteer, and industrial firefighters in the methods of fighting fires when conducted under the direct control and supervision of qualified instructors. Said firefighters shall be residents of the State of Vermont or affiliated with the mutual aid systems within the State of Vermont. Notification by the fire training officer or the fire chief of the training exercise shall be made to the Air Pollution Control Officer on prescribed forms at least fourteen days prior to the exercise.

4. Burning in forest land areas of brush, tree cuttings and slash where the cuttings accrue from pulping, lumber, and clearing of initial rights of way. Open burning related to clearing of initial rights of way in forest land areas will be considered permissible until September 1, 1973. (Tires, asphalt material or other material that could cause dense black smoke shall not be used to ignite the brush or tree cutting.)

5. On premise burning for the purpose of weed abatement; disease, forest fire and pest prevention; and agricultural improvement.

6. On premise burning of leaves, brush, deadwood, tree cuttings accrued from normal property maintenance by the owner, or lessee thereof.

7. Backyard burning of combustible domestic rubbish, except garbage, where no public disposal is available. This provision applies only to on-premises burning of combustible materials, except garbage, in a backyard waste burner having a capacity of eight (8) cubic feet or less and serving a building containing four (4) or less dwelling units.

8. Open burning in remote areas, as follows, if prior approval in writing is obtained from the Air Pollution Control Officer.

a. Highly explosive or other dangerous, or unusual materials for which there is no other feasible method of disposal.

b. Burning of combustible construction material resulting from the demolition of buildings and other structures, brush, tree trunks and the like, originating from within the state.

c. Other combustible materials for which there is no other feasible method of disposal.

9. Burning of natural wood in an area designated by the selectmen or city council, with the permission of the selectmen or city council of that municipality, and the fire warden in that jurisdiction, and in conformance with the procedures outlined in Subchapter IV of these regulations.

(2.0) 5-203 EXCEPTIONS

Open burning incidental to the development and testing of open pit incinerators provided plans and location meet the approval of the Air Pollution Control Officer and further provided that the Air Pollution Control Officer reserves the right to approve or disapprove the final design based on acceptable performance tests.

(2.0) 5-204 EXEMPTION FROM LIABILITY

A permission granted by the Air Pollution Control Officer under the provisions of this regulation does not relieve the petitioner from any legal responsibility attributable to the burning authorized by the permit.

(50.1.2) 5-211 PROHIBITION OF VISIBLE AIR CONTAMINANTS

1. Installations Constructed prior to April 30, 1970

On or after January 1, 1971, no person shall cause, suffer, allow or permit the emission of any air contaminant for more than a period or periods aggregating six (6) minutes in any hour, which has:

a. A shade, or density, greater than No. 2 of the Ringelmann Chart.

b. A shade or density of such opacity as to obscure an observer's view to a degree greater than does smoke described in subsection (a) of this section.

At no time shall the visible air contaminants have a shade, density, or appearance greater than No. 3 of the Ringelmann Chart.

2. Installations Constructed Subsequent to April 30, 1970

On or after April 30, 1970 no person shall cause, suffer, allow or permit the emission of any visible air contaminant, from installations constructed after the effective date of these regulations for more than a period or periods aggregating six (6) minutes in any hour, which has:

a. A shade or density, greater than No. 1 of the Ringelmann Chart.

b. A shade, or density, of such opacity as to obscure an observer's view to a degree greater than does the smoke described in subsection (a) of this section.

At no time shall the visible air contaminant have a shade, density or appearance greater than No. 3 of the Ringelmann Chart.

(51.21) 5-221 PROHIBITION OF POLLUTION POTENTIAL MATERIALS IN FUELS.

1. Sulfur Limitation in Fuel

a. No person shall cause or permit the use, purchase, or sale for use in stationary combustion installations within the State of Vermont for heat or power generation, fuels containing more sulfur, percentage by weight, than specified in the table below:

By October 1, 1971, not more than 2.2% sulfur by weight.
By October 1, 1972, not more than 1.5% sulfur by weight.
By October 1, 1974, not more than 1.0% sulfur by weight.

b. Notwithstanding the provisions of the other subsections of this section, after July 1, 1976 no new stationary combustion installation with greater than 250 million BTU's heat input shall discharge gases containing sulfur dioxide in excess of .80 lb. per million BTU heat input derived from liquid fossil fuels or 1.2 lb. per million BTU heating input derived from solid fossil fuels. This subsection shall not apply to gas turbine generators.

(50.1) 5-231 PROHIBITION OF PARTICULATE MATTER

1. Industrial Process Emissions

a. A person shall not discharge, cause, suffer, allow or permit in any one hour from any source whatsoever dust or fumes in total quantities in excess of the amounts shown in the following table: (See Table I). For purposes of this subsection, similar process units will be considered a singe process.

To use the table, take the process weight per hour as such is defined in the definition Process Weight. Opposite this number on the table is the maximum number of pounds of contaminants which may be discharged into the atmosphere in any hour. As in example, if A has a process which emits contaminants into the atmosphere and which process takes three hours to complete, he will divide the weight of all materials in a specific process, in this example, 1500 pounds, by three giving a process weight per hour of 500 pounds. The table shows that A may not discharge more than 1.77 pounds in any hour of process. Where the process weight per hour falls between the figures in the left-hand column the exact weight of the permitted discharge may be a linear interpolation.

b. In cases where process weight is not applicable as determined by the Air Pollution Control Officer, the concentration of solid particulates in the effluent gas stream shall not exceed 0.1 lb/1000 lb. of undiluted exhaust gas as actual conditions.

c. Fugitive particulate matter shall not be included in the determination of the maximum allowable weight discharged per hour as it applies to subsection (a) unless the fugitive particulate matter enters an air cleaning system that was not specifically designed for the fugitive particulate matter.

d. If this section is in conflict with any interpretation of (Fugitive Particulate Matter), the Air Pollution Control Officer shall determine which section shall apply.

2. Incinerator Emissions

a. A person shall not discharge, cause, suffer, allow, or permit air contaminants into the open air from any incinerator, with a designed charging rate of less than 50 tons per day, particulate matter in the exhaust gases to exceed 0.10 pounds per 100 pounds of refuse burnt. All incinerators built and installed after July 1, 1971 shall be multiple chamber incinerators or equipment found by the Air Pollution Control Officer, in advance of such use, to be equally effective for the purpose of air pollution control as an approved multiple chamber incinerator. The responsibility for showing that the equipment other than a multiple chamber incinerator is in compliance with the emission limits of this section shall be on the person seeking to come within the provisions of this section.

b. After January 1, 1974, no incinerator with a capacity less than 500 pounds per hour of refuse burnt shall be built or installed except incinerators used exclusively for the destruction of pathological waste unless substantial operating data is available to demonstrate compliance with emission standards when the proposed incinerator is utilizing a similar waste and conditions to the proposed installation.

c. After July, 1976 any incinerators with a designed charging rate of 50 ton per day or more shall be operated in such a manner that emissions of particulate matter shall not exceed 0.08 grain per dry standard cubic foot corrected to 12 percent carbon dioxide.

3. Combustion Contaminants

a. A person shall not discharge, cause, suffer, allow, or permit the emission of particulate matter caused by the combustion of fuel in fuel burning equipment from any stack or chimney.

(1) in excess of 0.5 (five tenths) of a pound per hour per million BTU's of heat input in combustion installations where the heat input is rated at 10 million BTU's or less per hour.

(2) in excess of allowable particulate emissions limitations as determined by Figure 1 for combustion installations where the heat input is greater than 10 million BTU's per hour, but where the heat input is less than 250 million BTU's per hour.

(3) in excess of 0.1 (one tenth) of a pound per hour per million BTU's of heat input in installations where the heat input is rated greater than 250 million BTU's per hour.

(4) in excess of 0.06 (six hundreths) of a pound per hour per million BTU's of heat input in installations constructed after July 1, 1971 where the heat input is rated greater than 1000 million BTU's per hour.

b. This regulation applies to installations in which fuel is burned for the primary purpose of producing steam, hot water, hot air or other liquids,

gases, or solids, and in the course of doing so, the products of combustion do not come into direct contact with the process material. Fuels include coal, coke, lignite, fuel oil and wood, but does not include refuse. When any product or by-products of a manufacturing process are burned for the same purpose, or in conjunction with any fuel, the same maximum emission limitation shall apply.

4. Potential Hazardous Particulate Matter

Persons responsible for a source operation from which hazardous particulate matter may be emitted such as, but not limited to, lead, silica and other such materials shall give the utmost care and consideration to the potential harmful effects of emissions resulting from such activities. Evaluation of these facilities as to the adequacy, efficiency and emission potential will be made on an individual basis by the Air Pollution Control Officer in conjunction with the Director, Division of Industrial Hygiene.

5. Fugitive Particulate Matter

A person shall not discharge, cause, suffer, allow, or permit any process operation to operate that is not equipped with a fugitive particulate matter control system. A person shall not cause, suffer, allow, or permit any materials to be handled, transported, or stored; or a building, its appurtenances, or a road to be used, constructed, altered, repaired or demolished without taking reasonable precautions to prevent particulate matter from becoming airborne. Public roads will not be subject to this section unless a public nuisance is created.

When fugitive dust emissions escape from a building or equipment in such manner and amount as to cause a nuisance or to violate any regulation, the Air Pollution Control Officer may order that the building or equipment in which processing, handling and storage are done be tightly closed and ventilated in such a way that all air and gases and air or gasborne material leaving the building or equipment are treated by removal or destruction of air contaminants before discharge to the open air.

6. Installations constructed subsequent to April 30, 1970

Hot-mix asphalt paving batch plant. A person shall not discharge or cause, suffer, allow or permit particulate matter in excess of .04 grains per standard cubic foot from a hot-mix asphalt batch plant constructed after April 30, 1970. For purposes of this regulation, an asphalt batch plant involves the use of a rotary frier, screening and classifying equipment, and an aggregate weighing system, a mixer, storage bins, and conveying equipment.

(50.6) 5-241 PROHIBITION OF NUISANCE AND ODOR

1. Nuisance

A person shall not discharge, cause, suffer, allow, or permit from any source whatsoever such quantities of air contaminants or other material which will cause injury, detriment, nuisance or annoyance to any considerable number of people or to the public or which endangers the comfort, repose, health or safety of any such persons or the public or which causes or has a natural tendency to cause injury or damage to business or property.

2. Odors

A person shall not discharge, cause, suffer, allow or permit any emissions of objectionable odors beyond the property line of a premises. An objectionable odor shall mean those odors deemed objectionable by fifteen percent or more of a sample of people exposed to them. The number of people in the said sample shall be at least 20 or, if fewer than 20 people, but greater than 4 (and provided that these persons are not from the same household) are exposed in a particular situation, 75 percent of the people exposed. The sample of people shall be taken from among those occupying or frequenting places closest to, but beyond the property line of the source of odors. Domestic odors are exempt from this section.

3. Control of Odor from Industrial Processes

a. No person shall operate or use any device, machine, equipment or other contrivance for the industrial processes which as determined by the Air Pollution Control Officer is an odoriferous process per se, unless all gases, vapors, and gas-entrained effluents from such facility are incinerated at a temperature of 1600 degrees F for a period of not less than five-tenths (0.5) second, or processed in such manner as determined by the Air Pollution Control Officer to be equally or more effective for the purpose of air pollution control.

b. Effective devices and measures shall be installed and operated in a manner such that no vent, exhaust pipe, blowoff pipe or opening of any kind shall discharge into the open air or atmosphere any odorous matter, air contaminants, dusts or any combination thereof which create odors or other nuisances.

c. Odor-producing materials shall be confined and handled in a manner such that odors produced within or outside the plant from such materials are controlled. Accumulation of odor-producing materials resulting from spillage or other means is prohibited.

d. Odor-bearing air contaminants arising from materials in process shall be confined at the point of origin so as to prevent liberation of odorous matter into the workroom and the confined air contaminants shall be treated before discharge to the atmosphere, as required in section c. COMBUSTION CONTAMINANTS.

e. Whenever air contaminants escape from a building or buildings used for processing, handling or storage of materials used in the industrial processes specified in section c. COMBUSTION CONTAMINANTS in such matter and amount as to cause a nuisance or to violate this Subchapter, the Air Pollution Control Officer shall order that said building or buildings be tightly closed and ventilated in such a way that all air contaminants are treated by incinerator or other means effective for their removal or destruction before discharge to the open air.

(50.3) 5-251. PROHIBITION OF GASEOUS AIR CONTAMINANTS

1. Control of Nitrogen Oxides Emissions

a. No person shall discharge, cause, allow or permit emission of nitrogen

oxides from a combustion installation with a capacity of 250 million BTU's or more and completed after July 1, 1971 in excess of 0.30 pounds per million BTU's of heat input per hour.

b. The provisions of this section shall not apply to a stationary industrial gas turbine utilized as a combustion installation until July 1, 1973.

SUBCHAPTER III. AMBIENT AIR QUALITY STANDARDS

(2.0) 5-301 PREAMBLE

The ambient air quality standards as set forth in this Subchapter are based upon:

1. The United States Department of Health, Education and Welfare's published air quality criteria reflecting scientific knowledge indicating the kind and extent of identifiable effects on health and welfare which may be expected from the presence of an air contaminant, or combination of contaminants, in the ambient air in varying quantities.

2. The United States Department of Health, Education and Welfare's published information on air pollution control techniques and technology and costs of emission control which provides data on the economic feasibility of methods of prevention and control of air contamination and cost-effectiveness analyses.

3. Evidence presented at public hearing.

4. A policy of non-degradation wherein the objective of ambient air quality standards is to provide a basis for preventing, or abating the effects of air pollution including effects on health, esthetics, and economy. Since their objective is to improve air quality, the standards should not be interpreted as permitting, encouraging or condoning degradation of the present air quality which is superior to that stipulated in the standards.

(9.0) 5-302 AIR MONITORING

The location of the monitoring stations, the method and frequency of sample collection, and the analytical procedures to be followed in the determination of the concentration of contaminants in the ambient air shall be as may be acceptable to the Agency of Environmental Conservation.

(4.0) 5-303 STANDARDS

1. Application

The presence in the ambient air space of contaminants in concentrations and durations exceeding these standards shall be deemed air pollution.

2. Total Suspended Particulates (T.S.P.)

a. Total suspended particulates shall be reported as ug/M^3 (micrograms per cubic meter) of air and shall be determined by the High Volume Air Sampling Procedure.*

* United States Public Health Service "Air Pollution Measurements of the National Air Sampling Network", P.H.S. Publication 978, U.S. Govt. Printing Office, Wash., D. C.

b. The annual geometric average shall not exceed 45 ug/M^3.

c. The daily amount of total suspended particulates shall not exceed 125 ug/M^3.

3. Sulfur Dioxide (SO^2)

a. Sulfur dioxide concentrations shall be reported as ug/M^3 (micrograms per cubic meter) as determined by the Modified West-Gaeke Procedure* and/or pulse fluorescent method****

b. The annual average shall not exceed 57ug/M^3 (0.02 parts per million)

c. The daily average concentration shall not exceed 150 ug/M^3 (0.05 parts per million).

d. The hourly concentration shall not exceed 285 ug/M^3 (0.10 parts per million).

4. Carbon Monoxide (CO)

a. Carbon Monoxide concentrations shall be reported as mg/M^3 (Milligrams per cubic meter) as determined by nondispersive infrared (NDIR) Procedures.**

b. Concentrations of carbon monoxide shall not exceed 10 mg/M^3 (8.7 parts per million)for any consecutive eight hour period.

5. Photochemical Oxidants

a. Photochemical oxidant concentrations shall be reported as ug/M^3 (micrograms per cubic meter) as determined by the Chemiluminescence Test Procedure.***

b. The hourly concentration shall not exceed 118 ug/M^3 (0.06 parts per million).

* Scaringelli, F. P. Saltzman, V. E. & FRAY, S. A., "Spectrophotometric Determination of Atmospheric Sulfur", Analytical Chemistry XXXIX (Dec. 1967) pp 1709-19.

** Intersociety Committee, Subcommittee IV on Carbon Compounds, Health Laboratory Science (January Supplement, 1970) p. 81-86.

*** Federal Register Vol. 36, No. 228, Part 50, Appendix D.

**** Federal Register Vol. 41, page 8531 Feb. 27, 1976.

6. Hydrocarbons (HC)

A primary ambient air quality standard for hydrocarbons is not being proposed at this time based on the following reasons:

a. There is an inferred inconsistency in the Hydrocarbon criteria document* between the method for continuous monitoring and the standard which seems to be acceptable to the Environmental Protection Agency. Routine continuous measuring of hydrocarbons have utilized the measurement of total hydrocarbon while the criteria suggests a standard for nonmethane hydrocarbons.

b. Recent amendment to the Federal Clean Air Act (December 31, 1970) places the onus of adopting an ambient air quality standard for hydrocarbon on the Administrator of the Federal Environmental Protection Agency within 120 days of the enactment of the Clean Air Act.

c. In order to maintain the primary standard for oxidant, it will be necessary to limit the hydrocarbon concentration to levels much below any level which gives rise directly to health effects.

* Air Quality Criteria for Hydrocarbons, U. S. Department of Health, Education and Welfare, March 1970.

SUBCHAPTER IV. OPERATIONS AND PROCEDURES

(2.0) 5-401 INDUSTRIES CLASSIFIED

The following activities are hereby classified as air contaminant sources if they do or may result in the discharge or emission of solid, liquid or gaseous wastes into the atmosphere.

1. Petroleum and petro-chemical development, processing and marketing

2. Industrial chemical manufacturing and processing

3. Paints and related materials, manufacturing and handling and application

4. Plastic, rubber and resin processing

5. Metal melting and reclaiming

6. Metal fabricating

7. Surface finishing and coating

8. Mineral, development and processing, including mining and quarrying and product application, including refuse

9. Woodworking, furniture manufacturing, sawmills, including refuse

10. Food processing

11. Inedible animal and vegetable byproduct processing

12. Commercial, industrial, recreational, lodging, public and other buildings

13. Commercial activities

14. Governmental activities

15. Vehicle manufacturing and servicing facilities

16. Textile, fabric, fiber, monofilament manufacturing and processing

17. Public utilities

(13.0) 5-402 WRITTEN REPORTS WHEN REQUESTED

The Air Pollution Control Officer may require written reports from the person operating or responsible for any air contaminant source, which reports shall include the location, siting information, size and height of contaminant outlets, processes employed, pertinent process and material flow, fuels used, nature and amount and time periods or duration of emissions and such other

information relevant to air pollution potential of a contaminant source and available or reasonably capable of being assembled as determined necessary and requested by said Officer. This information may also include the use of source test reports as required in Section 5-404. New point sources greater than one hundred tons per year of all pollutants would be required to submit information on their impact on the ambient air quality standards.

(2.0) 5-403 CIRCUMVENTION

No person shall build, erect, install or use any article, machine, equipment or other contrivances, the use of which, without resulting in a reduction in the total release of air contaminants to the atmosphere, reduced or conceals an emission which otherwise would constitute a violation of these regulations.

(9.0) 5-404 PROVISIONS OF SAMPLING & TESTING FACILITIES

1. Whenever the Air Pollution Control Officer has reason to believe that the emission limits of these regulations are being violated, it may require the owner to conduct tests to determine the particulate matter emission level, which tests shall include stack tests if circumstances so demand. The Air Pollution Control Officer may require that such tests be conducted in the presence of representatives of the Agency.

2. Should the Air Pollution Control Officer wish to conduct tests of his own to determine compliance with the emission limits of these regulations, the owner shall provide at no expense to the State of Vermont, reasonable and necessary openings in stacks, vents and ducts, along with safe and easy access thereto, including a suitable power source to the point of testing.

3. The Air Pollution Control Officer shall be supplied with such data as it may require to establish test conditions.

(9.0) 5-405 REQUIRED AIR MONITORING

The Air Pollution Control Officer may require the owner or operator of any air contaminant source to install, use and maintain such monitoring equipment and records, establish and maintain such records, and make such periodic emission reports as the Officer shall prescribe.

(9.0) 5-406 TESTING PROCEDURES

The method, or any conditions associated with the method, for source testing or air monitoring must be approved by the Air Pollution Control Officer.

(2.0) 5-407 ADDITIONAL CONTAMINANT CONTROL INFORMATION NEEDED PRIOR TO CONSTRUCTION

1. No person shall cause, suffer, allow or permit the new construction, modification, or alteration of any installation provided for in Section 5-408

without first notifying the State Air Pollution Control Agency of his intentions to construct or modify a stationary air contaminant source specified in Section 5-408. Within 15 days of the receipt of the notice, the State Air Pollution Control Agency may require as a condition precedent to the construction installation or modification of the said source, additional information that it deems necessary in order to determine whether the proposed construction installation or modification will be in accordance with its applicable rules in force pursuant to this Act.

2. Within 30 days after the receipt of complete plans, specifications or other information required pursuant to the Act, the Air Pollution Control Officer shall determine if the proposed construction or installation is in accord with the requirements of the regulations or applicable rules and shall issue an order approving or prohibiting the construction or modification of the said air contaminant source, or give approval upon the fulfillment of specific conditions. Failure of the Agency of Environmental Conservation to issue an order within the time prescribed herein shall redeem the determination that the construction, installation, modification of the establishment may proceed provided that it is in accordance with the plans, specifications or other information, if any, required to be submitted.

3. Nothing in this section shall be construed that, by the order or the lack of an order the affected facility is relieved from any performance standards which are specified by regulations or with any other provision of the law.

4. If the new construction or modification of the source will result in a violation of the applicable plans of the control strategy or will interfere with the attainment or maintenance of a national air quality standard, the Environmental Conservation Agency will issue an order preventing the construction, installation, or modification of said source.

(13.0) 5-408 INSTALLATIONS REQUIRING THAT INFORMATION BE SUBMITTED TO THE STATE AIR POLLUTION CONTROL AGENCY PRIOR TO CONSTRUCTION

The following types of installations are required to submit to the State Air Pollution Control Agency information regarding the air pollution potential of their proposed new construction, new installation, or modification:

1. Incinerators.

2. Asphalt hot-mix batching plants

3. Extraction Mineral Industry

4. Operations handling or transferring sand or dust producing materials

5. Chemical processes

6. Electrical power generation facilities

7. Petroleum or petrol chemical development processing or marketing

8. Inedible animal by-product processes

9. Woodwork, furniture manufacturing

10. Mineral product industries including quarrying operations

11. Fuel burning installations greater than 10 million BTU's per hour rated heat input

12. Leather tanning and finishing

13. Metal reclamation furnaces

14. Kraft Pulping Industry

15. Any other installation that would be required to meet Federal standards of performance for new stationary sources pursuant to Section III of the Federal Clean Air Act, (December 31, 1970) as amended.

16. Such sources as the Air Pollution Control Officer may require

(2.0) 5-409 CONSOLIDATION OF APPLICATIONS

In the event a person proposes to build, erect, alter, replace, sell or rent any stationary air contaminant source specified by regulation and subject to this Act and Act No. 250 of the Acts of 1969 (Adjourned Session 1970) required such person to make application to, and receive a permit from, a District Environmental Commission in accordance with Regulations of the Environmental Board, such person may consolidate his application for additional air contaminant information herein with his application for a permit under No. 250 provided that such application contains all such information and documentation as is required herein and subject to the same restrictions and conditions that are, or may be, imposed herein; in such event, the Division of Protection will review such application in accordance with these regulations and shall inform the District Commission whether, and upon what conditions, a permit should be issued insofar as these regulations, duly promulgated by this Act, have been satisfied.

(51.21) 5-420 PROCEDURES FOR LOCAL AUTHORITIES TO BURN NATURAL WOOD

The legislative branch of a municipality (selectmen or city council) may authorize the burning of natural wood and chemically untreated wood at a place within the municipality. The burning of such wood shall be conducted under the direction and at such times as the fire warden for that municipality determines. If the selectmen or city council intends to exercise this option to burn natural wood, the selectmen or city council shall notify the Secretary of the location of the site to be utilized for the public disposal of natural wood by open burning. Prior to burning of any material at this site, the Secretary shall certify in writing that this site is the one place within the municipality that will be used for the open burning of natural wood.

SUBCHAPTER V. MOTOR VEHICLE EMISSIONS

(2.0) 5-501 REMOVAL OF CONTROL DEVICES

No person shall remove, alter or otherwise render inoperative, the exhaust emission control system, the evaporative control system, or crankcase ventilation, or any other air pollution control device which has been installed as a requirement of the Federal or State laws or regulations.

(12.0) 5-502 EXCESSIVE SMOKE EMISSIONS FROM MOTOR VEHICLES

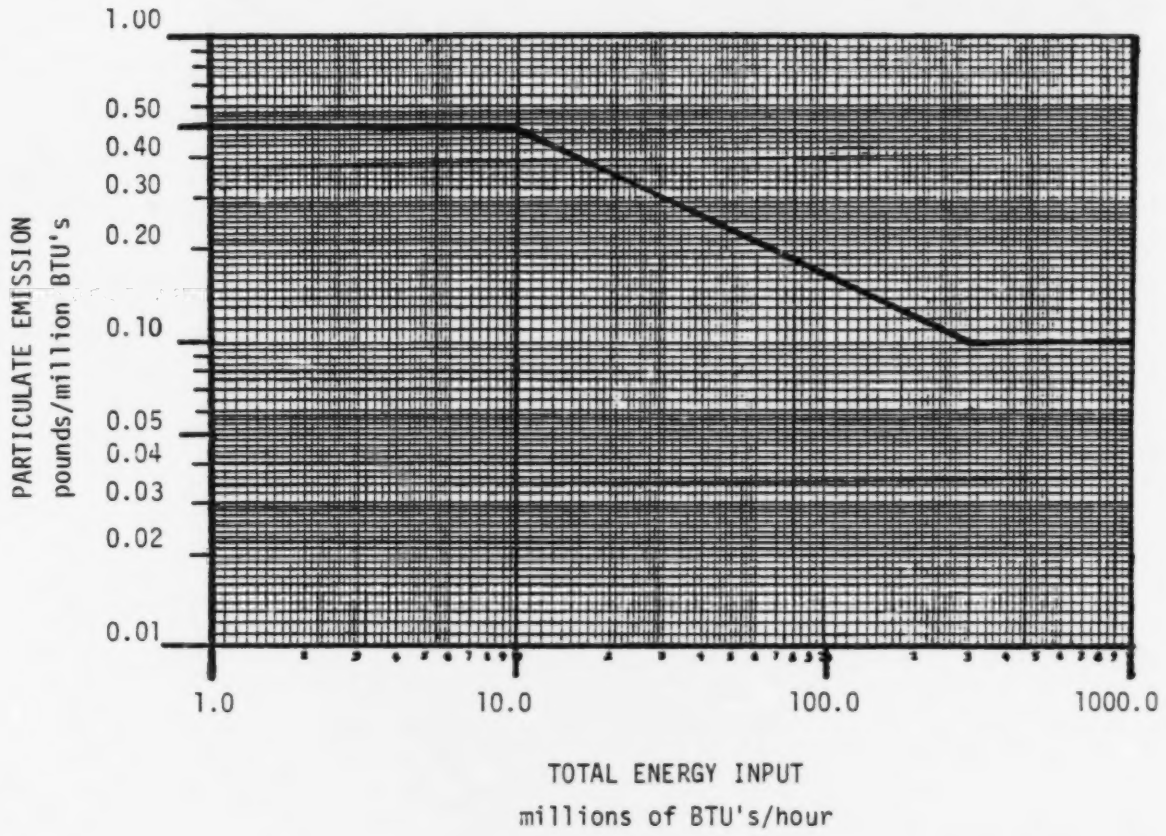
No person shall cause, suffer, allow, or permit excessive emissions of visible air contaminants, other than water, from a motor vehicle for longer than five (5) consecutive seconds.

Industrial Process Weight Standards

TABLE I

Process Wt/hr (lbs)	Maximum Weight Disch/hr (lbs)	Process Wt/hr (lbs)	Maximum Weight Disch/hr (lbs)
50	.24	3400	5.44
100	.46	3500	5.52
150	.66		
200	.85	3600	5.61
250	1.03	3700	5.69
300	1.20	3800	5.77
350	1.35	3900	5.85
400	1.50	4000	5.93
450	1.63		
500	1.77	4100	6.01
		4200	6.08
550	1.89	4300	6.15
600	2.01	4400	6.22
650	2.12	4500	6.30
700	2.24		
750	2.34	4600	6.37
800	2.43	4700	6.45
850	2.53	4800	6.52
900	2.62	4900	6.60
950	2.72	5000	6.67
1000	2.80		
1100	2.97	5500	7.03
1200	3.12	6000	7.37
1300	3.26	6500	7.71
1400	3.40	7000	8.05
1500	3.54	7500	8.39
1600	3.66	8000	8.71
1700	3.79	8500	9.03
1800	3.91	9000	9.36
1900	4.03	9500	9.67
2000	4.14		
		10000	10.0
2100	4.24	11000	10.63
2200	4.34	12000	11.28
2300	4.44	13000	11.89
2400	4.55	14000	12.50
2500	4.64	15000	13.13
2600	4.74	16000	13.74
2700	4.84	17000	14.36
2800	4.92	18000	14.97
2900	5.02	19000	15.58
3000	5.10	20000	16.19
		30000	22.22
3100	5.18	40000	28.3
3200	5.27	50000	34.3
3300	5.36	60000 or More	40.0

FIGURE 1 - FUEL BURNING EQUIPMENT



FEDERALLY PROMULGATED

REGULATIONS

(14.0) 52.2374 GENERAL REQUIREMENTS

(b) REGULATION FOR PUBLIC AVAILABILITY OF EMISSION DATA

(1) Any person who cannot obtain emission data from the Agency responsible for making emission data available to the public, as specified in the applicable plan, concerning emissions from any source subject to emission limitations which are part of the approved plan may request that the appropriate Regional Administrator obtain and make public such data. Within 30 days after receipt of any such written request, the Regional Administrator shall require the owner or operator of any such source to submit information within 30 days on the nature and amounts of emissions from such source and any other information as may be deemed necessary by the Regional Administrator to determine whether such source is in compliance with applicable emission limitations or other control measures that are part of the applicable plan.

(2) Commencing after the initial notification by the Regional Administrator pursuant to paragraph (b) (1) of this section, the owner or operator of the source shall maintain records of the nature and amounts of emissions from such source and any other information as may be deemed necessary by the Regional Administration to determine whether such source is in compliance with applicable emission limitations or other control measures that are part of the plan. The information recorded shall be summarized and reported to the Regional Administrator, on forms furnished by the Regional Administrator, and shall be submitted within 45 days after the end of the reporting period. Reporting periods are January 1--June 30 and July 1--December 31.

(3) Information recorded by the owner or operator and copies of this summarizing report submitted to the Regional Administrator shall be retained by the owner or operator for 2 years after the date on which the pertinent report is submitted.

(4) Emission data obtained from owners or operators of stationary sources will be correlated with applicable emission limitations and other control measures that are part of the applicable plan and will be available at the appropriate regional office and at other locations in the state designated by the Regional Administrator.

(10.0) 52.2377 Review of New or Modified Indirect Sources

(b) Regulation for Review of New or Modified Indirect Sources

(1) All terms used in this paragraph but not specifically defined below shall have the meaning given them in 52.01 of this chapter.

(i) The term "indirect source" means a facility, building, structure, or installation which attracts or may attract mobile source activity that results in emissions of a pollutant for which there is a national standard. Such indirect sources include, but are not limited to:

(a) Highways and roads.

(b) Parking facilities.

(c) Retail, commercial and industrial facilities.

(d) Recreation, amusement, sports and entertainment facilities.

(e) Airports.

(f) Office and Government buildings.

(g) Apartment and condominium buildings.

(h) Education facilities.

(ii) The term "Administrator" means the Administrator of the Environmental Protection Agency or his designated agent.

(iii) The term "associated parking area" means a parking facility or facilities owned and/or operated in conjunction with an indirect source.

(iv) The term "aircraft operation" means an aircraft take-off or landing.

(v) The phrase "to commence construction" means to engage in a continuous program of on-site construction including site clearance, grading, dredging, or land filling specifically designed for an indirect source in preparation for the fabrication, erection, or installation of the building components of the indirect source. For the purpose of this paragraph, interruptions resulting from acts of God, strikes, litigation, or other matters beyond the control of the owner shall be disregarded in determining whether a construction or modification program is continuous.

(vi) The phrase "to commence modification" means to engage in a continuous program of on-site modification, including site clearance, grading, dredging, or land filling in preparation for specific modification of the indirect source.

(vii) The term "highway section" means the development proposal of a highway of substantial length between logical termini (major crossroads, population centers, major traffic generators, or similar major highway control elements) as normally included in a single location study or multi-year highway improvement program as set forth in 23 CFR 770.201 (38 FR 31677).

(viii) The term "highway project" means all or a portion of a highway section which would result in a specific construction contract.

(ix) The term "Standard Metropolitan Statistical Area (SMSA)" means such areas as designated by the U.S. Bureau of the Budget in the following publication: "Standard Metropolitan Statistical Area," issued in 1967, with subsequent amendments.

(2) The requirements of this paragraph are applicable to the following:

(i) In an SMSA:

(a) Any new parking facility or other new indirect source with an associated parking area, which has a new parking capacity of 1,000 cars or more; or

(b) Any modified parking facility, or any modification of an associated parking area, which increases parking capacity by 500 cars or more; or

(c) Any new highway project with an anticipated average annual daily traffic volume of 20,000 or more vehicles per day within ten years of construction; or

(d) Any modified highway project which will increase average annual daily traffic volume by 10,000 or more vehicles per day within ten years after modification.

(ii) Outside an SMSA:

(a) Any new parking facility, or other new indirect source with an associated parking area, which has a parking capacity of 2,000 cars or more; or

(b) Any modified parking facility, or any modification of an associated parking area, which increases parking capacity by 1,000 cars or more.

(iii) Any airport, the construction or general modification program of which is expected to result in the following activity within ten years of construction or modification:

(a) New airport: 50,000 or more operations per year by regularly scheduled air carriers, or use by 1,600,000 or more passengers per year.

(b) Modified airport: Increase of 50,000 or more operations per year by regularly scheduled air carriers over the existing volume of operations, or increase of 1,600,000 or more passengers per year.

(iv) Where an indirect source is constructed or modified in increments which individually are not subject to review under this paragraph, and which are not part of a program of construction or modification in planned incremental phases approved by the Administrator, all such increments commenced after December 31, 1974, or after the latest approval hereunder, whichever date is most recent, shall be added together for determining the applicability of this paragraph.

(3) No owner or operator of an indirect source subject to this paragraph shall commence construction or modification of such source after December 31, 1974, without first obtaining approval from the Administrator. Application for approval to construct or modify shall be by means prescribed by the Administrator, and shall include a copy of any draft or final environmental impact statement which has been prepared pursuant to the National Environmental Policy Act (42 U.S.C. 4321). If not included in such environmental impact statement, the Administrator may request the following information:

(i) For all indirect sources subject to this paragraph, other than highway projects:

(a) The name and address of the applicant.

(b) A map showing the location of the site of indirect source and the topography of the area.

(c) A description of the proposed use of the site, including the normal hours of operation of the facility, and the general types of activities to be operated therein.

(d) A site plan showing the location of associated parking areas, points of motor vehicle ingress and egress to and from the site and its associated parking areas, and the location and height of buildings on the site.

(e) An identification of the principal roads, highways, and intersections that will be used by motor vehicles moving to or from the indirect source.

(f) An estimate, as of the first year after the date the indirect source will be substantially complete and operational, of the average daily traffic volumes, maximum traffic volumes for one-hour and eight-hour periods, and vehicle capacities of the principal roads, highways, and intersections identified pursuant to subdivision (i) (e) of this subparagraph located within one-fourth mile of all boundaries of the site.

(g) Availability of existing and projected mass transit to service the site.

(h) Where approval is sought for indirect sources to be constructed in incremental phases, the information required by this subparagraph (3) shall be submitted for each phase of the construction project.

(i) Any additional information or documentation that the Administrator deems necessary to determine the air quality impact of the indirect source, including the submission of measured air quality data at the proposed site prior to construction or modification.

(ii) For airports:

(a) An estimate of the average number and maximum number of aircraft operations per day by type of aircraft during the first, fifth and tenth years after the date of expected completion.

(b) A description of the commercial, industrial, residential and other development that the applicant expects will occur within three miles of the perimeter of the airport within the first five and the first ten years after the date of expected completion.

(c) Expected passenger loadings at the airport.

(d) The information required under subdivisions (i) (a) through (i) of this subparagraph.

(iii) For highway projects:

(a) A description of the average and maximum traffic volumes for one, eight, and 24-hour time periods expected within 10 years of date of expected completion.

(b) An estimate of vehicle speeds for average and maximum traffic volume conditions and the vehicle capacity of the highway project.

(c) A map showing the location of the highway project, including the location of buildings along the right-of-way.

(d) A description of the general features of the highway project and associated right-of-way, including the approximate height of buildings adjacent to the highway.

(e) Any additional information or documentation that the Administrator deems necessary to determine the air quality impact of the indirect source, including the submission of measured air quality data at the proposed site prior to construction or modification.

(iv) For indirect sources other than airports and those highway projects subject to the provisions of paragraph (b) (6) (iii) of this section, the air quality monitoring requirements of paragraph (b) (3) (i) (i) of this section shall be limited to carbon monoxide, and shall be conducted for a period of not more than 14 days.

(4) (i) For indirect sources other than highway projects and airports, the Administrator shall not approve an application to construct or modify if he determines that the indirect source will:

(a) Cause a violation of the control strategy of any applicable state implementation plan; or

(b) Cause or exacerbate a violation of the national standards for carbon monoxide in any region or portion thereof.

(ii) The Administrator shall make the determination pursuant to paragraph (b) (4) (i) (b) of this section by evaluating the anticipated concentration of carbon monoxide at reasonable receptor or exposure sites which will be affected by the mobile source activity expected to be attracted by the indirect source. Such determination may be made by using traffic flow characteristic guidelines

published by the Environmental Protection Agency which relate traffic demand and capacity considerations to ambient carbon monoxide impact, by use of appropriate atmospheric diffusion models (examples of which are referenced in Appendix O to Part 51 of this chapter), and/or by any other reliable analytic method. The applicant may (but need not) submit with his application, the results of an appropriate diffusion model and/or any other reliable analytic method, along with the technical data and information supporting such results. Any such results and supporting data submitted by the applicant shall be considered by the Administrator in making his determination pursuant to paragraph (b) (4) (i) (b) of this section.

(5) (i) For airports subject to this paragraph, the Administrator shall base his decision on the approval or disapproval of an application on the considerations to be published as an Appendix to this Part.

(ii) For highway projects and parking facilities specified under paragraph (b) (2) of this section which are associated with airports, the requirements and procedures specified in paragraphs (b) (4) and (6) (i) and (ii) of this section shall be met.

(6) (i) For all highway projects subject to this paragraph, the Administrator shall not approve an application to construct or modify if he determines that the indirect source will:

(a) Cause a violation of the control strategy of any applicable state implementation plan; or

(b) Cause or exacerbate a violation of the national standards for carbon monoxide in any region or portion thereof.

(ii) The determination pursuant to paragraph (b) (6) (i) (b) of this section shall be made by evaluating the anticipated concentration of carbon monoxide at reasonable receptor or exposure sites which will be affected by the mobile source activity expected on the highway for the ten year period following the expected date of completion according to the procedures specified in paragraph (b) (4) (ii) of this section.

(iii) For new highway projects subject to this paragraph with an anticipated average daily traffic volume of 50,000 or more vehicles within ten years of construction, or modifications to highway projects subject to this paragraph which will increase average daily traffic volume by 25,000

or more vehicles within ten years after modification, the Administrator's decision on the approval or disapproval of an application shall be based on the considerations to be published as an Appendix to this Part in addition to the requirements of paragraph (b) (6) (i) of this section.

(7) The determination of the air quality impact of a proposed indirect source "at reasonable receptor or exposure sites", shall mean such locations where people might reasonably be exposed for time periods consistent with the national ambient air quality standards for the pollutants specified for analysis pursuant to this paragraph.

(8) (i) Within 20 days after receipt of an application or addition thereto, the Administrator shall advise the owner or operator of any deficiency in the information submitted in support of the application. In the event of such a deficiency, the date of receipt of the application for the purpose of paragraph (b) (8) (ii) of this section shall be the date on which all required information is received by the Administrator.

(ii) Within 30 days after receipt of a complete application, the Administrator shall:

(a) Make a preliminary determination whether the indirect source should be approved, approved with conditions in accordance with paragraphs (b) (9) or (10) of this section, or disapproved.

(b) Make available in at least one location in each region in which the proposed indirect source would be constructed, a copy of all materials submitted by the owner or operator, a copy of the Administrator's preliminary determination, and a copy or summary of other materials, if any, considered by the Administrator in making his preliminary determination; and

(c) Notify the public, by prominent advertisement in a newspaper of general circulation in each region in which the proposed indirect source would be constructed, of the opportunity for written public comment on the information submitted by the owner or operator and the Administrator's preliminary determination on the approvability of the indirect source.

(iii) A copy of the notice required pursuant to this subparagraph shall be sent to the applicant and to officials and agencies having cognizance over the location where the indirect source will be situated, as follows: State and local air pollution control agencies, the chief executive of the city and county; any comprehensive regional

land use planning agency; and for highways, any local board or committee charged with responsibility for activities in the conduct of the urban transportation planning process (3-C process) pursuant to 23 U.S.C. 134.

(iv) Public comments submitted in writing within 30 days after the date such information is made available shall be considered by the Administrator in making his final decision on the application. No later than 10 days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The Administrator shall consider the applicant's response in making his final decision. All comments shall be made available for public inspection in at least one location in the region in which the indirect source would be located.

(v) The Administrator shall take final action on an application within 30 days after the close of the public comment period. The Administrator shall notify the applicant in writing of his approval, conditional approval, or denial of the application, and shall set forth his reasons for conditional approval or denial. Such notification shall be made available for public inspection in at least one location in the region in which the indirect source would be located.

(vi) The Administrator may extend each of the time periods specified in paragraphs (b) (8) (ii), (iv), or (v) of this section by no more than 30 days, or such other period as agreed to by the applicant and the Administrator.

(9) (i) Whenever an indirect source as proposed by an owner or operator's application would not be permitted to be constructed for failure to meet the tests set forth pursuant to paragraphs (b) (4) (i), (b) (5) (i), or (b) (6) (i) and (iii) of this section, the Administrator may impose reasonable conditions on an approval related to the air quality aspects of the proposed indirect source so that such source, if constructed or modified in accordance with such conditions, could meet the tests set forth pursuant to paragraphs (b) (4) (i), (b) (5) (i), or (b) (6) (i) and (iii) of this section. Such conditions may include, but not be limited to:

(a) Binding commitments to roadway improvements or additional mass transit facilities to serve the indirect source secured by the owner or operator from governmental agencies having jurisdiction thereof;

(b) Binding commitments by the owner or operator to specific programs for mass transit incentives for employees and patrons of the source; and

(c) Binding commitments by the owner or operator to construct, modify, or operate the indirect source in such a manner as may be necessary to achieve the traffic flow characteristics published by the Environmental Protection Agency pursuant to paragraph (b) (4) (ii) of this section.

(ii) The Administrator may specify that any items of information provided in an application for approval related to the operation of an indirect source which may affect the source's air quality impact shall be considered permit conditions.

(10) Notwithstanding the provisions relating to modified indirect sources contained in paragraph (b) (2) of this section, the Administrator may condition any approval by reducing the extent to which the indirect source may be further modified without resubmission for approval under this paragraph.

(11) Any owner or operator who fails to construct an indirect source in accordance with the application as approved by the Administrator; any owner or operator who fails to construct and operate an indirect source in accordance with conditions imposed by the Administrator under paragraph (b) (9) of this section; any owner or operator who modifies an indirect source in violation of conditions imposed by the Administrator under paragraph (b) (10) of this section; or any owner or operator of an indirect source subject to this paragraph who commences construction or modification thereof after December 31, 1974, without applying for and receiving approval hereunder, shall be subject to the penalties specified under section 113 of the Act and shall be considered in violation of an emission standard or limitation under section 304 of the Act. Subsequent modification to an approved indirect source may be made without applying for permission pursuant to this paragraph only where such modification would not violate any condition imposed pursuant to paragraphs (b) (9) and (10) of this section and would not be subject to the modification criteria set forth in paragraph (b) (2) of this section.

(12) Approval to construct or modify shall become invalid if construction or modification is not commenced within 24 months after receipt of such approval. The Administrator may extend such time period upon satisfactory showing that an extension is justified. The applicant may apply for such an extension at the time of initial application or at any time thereafter.

(13) Approval to construct or modify shall not relieve any owner or operator of the responsibility to comply with the control strategy and all local, State and Federal regulations which are part of the applicable State implementation plan.

(14) Where the Administrator delegates the responsibility for implementing the procedures for conducting indirect source review pursuant to this paragraph to any agency, other than a regional office of the Environmental Protection Agency, the following provisions shall apply:

(i) Where the agency designated is not an air pollution control agency, such agency shall consult the appropriate State or local air pollution control agency prior to making any determination required by paragraphs (b) (4), (5), or (6) of this section. Similarly, where the agency designated does not have continuing responsibilities for land use planning, such agency shall consult with the appropriate State or local land use and transportation planning agency prior to making any determination required by paragraph (b) (9) of this section.

(ii) The Administrator of the Environmental Protection Agency shall conduct the indirect source review pursuant to this paragraph for any indirect source owned or operated by the United States Government.

(iii) A copy of the notice required pursuant to paragraph (b) (8) (ii) (c) of this section shall be sent to the Administrator through the appropriate Regional Office.

(15) In any area in which a "management of parking supply" regulation which has been promulgated by the Administrator is in effect, indirect sources which are subject to review under the terms of such a regulation shall not be required to seek review under this paragraph but instead shall be required to seek review pursuant to such management of parking supply regulation. For purposes of this paragraph, a "management of parking supply" regulation shall be any regulation promulgated by the Administrator as part of a transportation control plan pursuant to the Clean Air Act which requires that any new or modified facility containing a given number of parking spaces shall receive a permit or other prior approval, issuance of which is to be conditioned on air quality considerations.

(16) Notwithstanding any of the foregoing provisions to the contrary, the operation of this paragraph is hereby suspended pending further notice. No facility which commences construction prior to the expiration of the sixth month after the operation of this paragraph is reinstated (as to that type of facility) shall be subject to this paragraph.

(37 FR 10846, May 31, 1972 as amended at 40 FR 28065, July 3, 1975; 40 FR 40160, Sept. 2, 1975)

(17.0) 52.2380 Prevention of Significant Deterioration

(b) Definitions. For the purposes of this section:

(1) "Facility" means an identifiable piece of process equipment. A stationary source is composed of one or more pollutant-emitting facilities.

(2) The phrase "Administrator" means the Administrator of the Environmental Protection Agency or his designated representative.

(3) The phrase "Federal Land Manager" means the head, or his designated representative, of any Department or Agency of the Federal Government which administers federally-owned land, including public domain lands.

(4) The phrase "Indian Reservation" means any federally-recognized reservation established by Treaty, Agreement, Executive Order, or Act of Congress.

(5) The phrase "Indian Governing Body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

(6) "Construction" means fabrication, erection or installation of a stationary source.

(7) "Commenced" means that an owner or operator has undertaken a continuous program of construction or modification or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification.

(c) Area designation and deterioration increment

(1) The provisions of this paragraph have been incorporated by reference into the applicable implementation plans for various States, as provided in Subparts B through DDD of this part. Where this paragraph is so incorporated, the provisions shall also be applicable to all lands owned by the Federal Government and Indian Reservations located in such State. The provisions of this paragraph do not apply in those counties or other functionally equivalent areas that pervasively exceeded any national ambient air quality standards during 1974 for sulfur dioxide or particulate matter and then only with respect to such pollutants. States may notify the Administrator at any time of those areas which exceeded the national standards during 1974 and therefore are exempt from the requirements of this paragraph.

(2) (i) For purposes of this paragraph, areas designated as Class I or II shall be limited to the following increases in pollutant concentration occurring since January 1, 1975:

Pollutant	Area Designations: Class I (ug/m^3)	Area Designations: Class II (ug/m^3)
Particulate matter:		
Annual geometric mean	5	10
24-hr maximum	10	30
Sulfur dioxide:		
Annual arithmetic mean	2	15
24-hr maximum	5	100
3-hr maximum	25	700

(ii) For purposes of this paragraph, areas designated as Class III shall be limited to concentrations of particulate matter and sulfur dioxide no greater than the national ambient air quality standards.

(iii) The air quality impact of sources granted approval to construct or modify prior to January 1, 1975 (pursuant to the approved new source review procedures in the plan) but not yet operating prior to January 1, 1975, shall not be counted against the air quality increments specified in paragraph (c) (2) (i) of this section.

(3) (i) All areas are designated Class II as of the effective date of this paragraph. Redesignation may be proposed by the respective States, Federal Land Manager, or Indian Governing Bodies, as provided below, subject to approval by the Administrator.

(ii) The State may submit to the Administrator a proposal to redesignate areas of the State Class I, Class II, or Class III, provided that:

(a) At least one public hearing is held in or near the area affected and this public hearing is held in accordance with procedures established in 51.4 of this chapter, and

(b) Other States, Indian Governing Bodies, and Federal Land Managers whose lands may be affected by the proposed redesignation are notified at least 30 days prior to the public hearing, and

(c) A discussion of the reasons for the proposed redesignation is available for public inspection at least 30 days prior to the hearing and the notice announcing the hearing contains appropriate notification of the availability of such discussion, and

(d) The proposed redesignation is based on the record of the State's hearing, which must reflect the basis for the proposed redesignation, including consideration of (1) growth anticipated in the area, (2) the social, environmental, and economic effects of such redesignation upon the area being proposed for redesignation and upon other areas and States, and (3) any impacts of such proposed redesignation upon regional or national interests.

(e) The redesignation is proposed after consultation with the elected leadership of local and other substate general purpose governments in the area covered by the proposed redesignation.

(iii) Except as provided in paragraph (c) (3) (iv) of this section, a State in which lands owned by the Federal Government are located may submit to the Administrator a proposal to redesignate such lands Class I, Class II, or Class III in accordance with subdivision (ii) of this subparagraph provided that:

(a) The redesignation is consistent with adjacent State and privately owned land, and

(b) Such redesignation is proposed after consultation with the Federal Land Manager.

(iv) Notwithstanding subdivision (iii) of this subparagraph, the Federal Land Manager may submit to the Administrator a proposal to redesignate any Federal lands to a more restrictive designation than would otherwise be applicable provided that:

(a) The Federal Land Manager follows procedures equivalent to those required of States under paragraph (c) (3) (ii) and,

(b) Such redesignation is proposed after consultation with the State(s) in which the Federal Land is located or which border the Federal Land.

(v) Nothing in this section is intended to convey authority to the States over Indian Reservations where States have not assumed such authority under other laws nor is it intended to deny jurisdiction which States have assumed

under other laws. Where a State has not assumed jurisdiction over an Indian Reservation the appropriate Indian Governing Body may submit to the Administrator a proposal to redesignate areas Class I, Class II, or Class III, provided that:

(a) The Indian Governing Body follows procedures equivalent to those required of States under paragraph (c) (3) (ii) and,

(b) Such redesignation is proposed after consultation with the State(s) in which the Indian Reservation is located or which border the Indian Reservation and, for those lands held in trust, with the approval of the Secretary of the Interior.

(vi) The Administrator shall approve, within 90 days, any redesignation proposed pursuant to this subparagraph as follows:

(a) Any redesignation proposed pursuant to subdivisions (ii) and (iii) of this subparagraph shall be approved unless the Administrator determines (1) that the requirements of subdivisions (ii) and (iii) of this subparagraph have not been complied with, (2) that the State has arbitrarily and capriciously disregarded relevant considerations set forth in subparagraph (3) (ii) (d) of this paragraph, or (3) that the State has not requested and received delegation of responsibility for carrying out the new source review requirements of paragraphs (d) and (e) of this section.

(b) Any redesignation proposed pursuant to subdivision (iv) of this subparagraph shall be approved unless he determines (1) that the requirements of subdivision (iv) of this subparagraph have not been complied with, or (2) that the Federal Land Manager has arbitrarily and capriciously disregarded relevant considerations set forth in subparagraph (3) (ii) (d) of this paragraph.

(c) Any redesignation submitted pursuant to subdivision (v) of this subparagraph shall be approved unless he determines (1) that the requirements of subdivision (v) of this subparagraph have not been complied with, or (2) that the Indian Governing Body has arbitrarily and capriciously disregarded relevant considerations set forth in subparagraph (3) (ii) (d) of this paragraph.

(d) Any redesignation proposed pursuant to this paragraph shall be approved only after the Administrator has solicited written comments from affected Federal agencies and Indian Governing Bodies and from the public on the proposal.

(e) Any proposed redesignation protested to the proposing State, Indian Governing Body, or Federal Land Manager and to the Administrator by another State or Indian Governing Body because of the effects upon such protesting State or Indian Reservation shall be approved by the Administrator only if he determines that in his judgment the redesignation appropriately balances considerations of growth anticipated in the area proposed to be redesignated; the social, environmental and economic effects of such redesignation upon the area being redesignated and upon other areas and States; and any impacts upon regional or national interests.

(f) The requirements of paragraph (c) (3) (vi) (a) (3) that a State request and receive delegation of the new source review requirements of this section as a condition to approval of a proposed redesignation, shall include as a minimum receiving the administrative and technical functions of the new source review. The Administrator will carry out any required enforcement action in cases where the State does not have adequate legal authority to initiate such actions. The Administrator may waive the requirements of paragraph (c) (3) (vi) (a) (3) if the State Attorney-General has determined that the State cannot accept delegation of the administrative/technical functions.

(vii) If the Administrator disapproves any proposed area designation under this subparagraph, the State, Federal Land Manager or Indian Governing Body, as appropriate, may resubmit the proposal after correcting the deficiencies noted by the Administrator or reconsidering any area designation determined by the Administrator to be arbitrary and capricious.

(d) Review of new sources

(1) The provisions of this paragraph have been incorporated by reference into the applicable implementation plans for various States, as provided in Subparts B through DDD of this part. Where this paragraph is so incorporated, the requirements of this paragraph apply to any new or modified stationary source of the type identified below which has not commenced construction or modification prior to June 1, 1975 except as specifically provided below. A

source which is modified, but does not increase the amount of sulfur oxides or particulate matter emitted, or is modified to utilize an alternative fuel, or higher sulfur content fuel, shall not be subject to this paragraph.

(i) Fossil-Fuel Steam Electric Plants of more than 1000 million B.T.U. per hour heat input.

(ii) Coal Cleaning Plants.

(iii) Kraft Pulp Mills.

(iv) Portland Cement Plants.

(v) Primary Zinc Smelters.

(vi) Iron and Steel Mills.

(vii) Primary Aluminum Ore Reduction Plants.

(viii) Primary Copper Smelters.

(ix) Municipal Incinerators capable of charging more than 250 tons of refuse per 24 hour day.

(x) Sulfuric Acid Plants.

(xi) Petroleum Refineries.

(xii) Lime Plants.

(xiii) Phosphate Rock Processing Plants.

(xiv) By-Product Coke Oven Batteries.

(xv) Sulfur Recovery Plants.

(xvi) Carbon Black Plants (furnace process).

(xvii) Primary Lead Smelters.

(xviii) Fuel Conversion Plants.

(xix) Ferroalloy production facilities commencing construction after October 5, 1975.

(2) No owner or operator shall commence construction or modification of a source subject to this paragraph unless the Administrator determines that, on the basis of information submitted pursuant to subparagraph (3) of this paragraph:

(i) The effect on air quality concentration of the source or modified source, in conjunction with the effects of growth and reduction in emissions after January 1, 1975, of other sources in the area affected by the proposed source, will not violate the air quality increments applicable in the area where the source will be located nor the air quality increments applicable in any other areas. The analysis of emissions growth and reduction after January 1, 1975, of other sources in the areas affected by the proposed source shall include all new and modified sources granted approval to construct pursuant to this paragraph; reduction in emissions from existing sources which contributed to air quality during all or part of 1974; and general commercial, residential, industrial, and other sources of emissions growth not exempted by paragraph (c) (2) (111) of this section which has occurred since January 1, 1975.

(ii) The new or modified source will meet an emission limit, to be specified by the Administrator as a condition to approval, which represents that level of emission reduction which would be achieved by the application of best available control technology, as defined in 52.01 (f), for particulate matter and sulfur dioxide. If the Administrator determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an emission standard infeasible, he may instead prescribe a design or equipment standard requiring the application of best available control technology. Such standard shall to the degree possible set forth the emission reductions achievable by implementation of such design or equipment, and shall provide for compliance by means which achieve equivalent results.

(iii) With respect to modified sources, the requirements of subparagraph (2) (ii) of this paragraph shall be applicable only to the facility or facilities from which emissions are increased.

(3) In making the determinations required by paragraph (d) (2) of this section, the Administrator shall, as a minimum, require the owner or operator of the source subject to this paragraph to submit: site information, plans, description, specifications, and drawings showing the design of the source; information necessary to determine the impact that the construction or modification will have on sulfur dioxide and particulate matter air quality levels; and any other information necessary to determine that best available control technology will be applied. Upon request of the Administrator, the owner or operator of the source shall provide information on the nature and extent of general commercial, residential, industrial, and other growth which has occurred in the area affected by the source's emissions (such area to be specified by the

Administrator) since January 1, 1975.

(4) (i) Where a new or modified source is located on Federal Lands, such source shall be subject to the procedures set forth in paragraphs (d) and (e) of this section. Such procedures shall be in addition to applicable procedures conducted by the Federal Land Manager for administration and protection of the affected Federal Lands. Where feasible, the Administrator will coordinate his review and hearings with the Federal Land Manager to avoid duplicate administrative procedures.

(ii) New or modified sources which are located on Indian Reservations shall be subject to procedures set forth in paragraphs (d) and (e) of this section. Such procedures shall be administered by the Administrator in cooperation with the Secretary of the Interior with respect to lands over which the State has not assumed jurisdiction under other laws.

(iii) Whenever any new or modified source is subject to action by a Federal Agency which might necessitate preparation of an environmental impact statement pursuant to the National Environmental Policy Act (42 U.S.C. 4321), review by the Administrator conducted pursuant to this paragraph shall be coordinated with the broad environmental reviews under that Act, to the maximum extent feasible and reasonable.

(5) Where an owner or operator has applied for permission to construct or modify pursuant to this paragraph and the proposed source would be located in an area which has been proposed for redesignation to a more stringent class (or the State, Indian Governing Body, or Federal Land Manager has announced such consideration), approval shall not be granted until the Administrator has acted on the proposed redesignation.

(e) Procedures for public participation

(1) (i) Within 20 days after receipt of an application to construct, or any addition to such application, the Administrator shall advise the owner or operator of any deficiency in the information submitted in support of the application. In the event of such a deficiency, the date of receipt of the application for the purpose of paragraph (e) (1) (ii) of this section shall be the date on which all required information is received by the Administrator.

(ii) Within 30 days after receipt of a complete application, the Administrator shall:

(a) Make a preliminary determination whether the source should be approved, approved with conditions, or disapproved.

(b) Make available in at least one location in each region in which the proposed source would be constructed, a copy of all materials submitted by the owner or operator, a copy of the Administrator's preliminary determination and a copy or summary of other materials, if any, considered by the Administrator in making his preliminary determination; and

(c) Notify the public, by prominent advertisement in newspaper of general circulation in each region in which the proposed source would be constructed, of the opportunity for written public comment on the information submitted by the owner or operator and the Administrator's preliminary determination on the approvability of the source.

(iii) A copy of the notice required pursuant to this subparagraph shall be sent to the applicant and to officials and agencies having cognizance over the locations where the source will be situated as follows: State and local air pollution control agencies, the chief executive of the city and county; any comprehensive regional land use planning agency; and any State, Federal Land Manager or Indian Governing Body whose lands will be significantly affected by the source's emissions.

(iv) Public comments submitted in writing within 30 days after the date such information is made available shall be considered by the Administrator in making his final decision on the application. No later than 10 days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The Administrator shall consider the applicant's response in making his final decision. All comments shall be made available for public inspection in at least one location in the region in which the source would be located.

(v) The Administrator shall take final action on an application within 30 days after the close of the public comment period. The Administrator shall notify the applicant in writing of his approval, conditional approval, or denial of the application, and shall set forth his reasons for conditional approval or denial. Such notification shall be made available for public inspection in at least one location in the region in which the source would be located.

(vi) The Administrator may extend each of the time periods specified in paragraph (e) (1) (ii), (iv), or (v) of this section by no more than 30 days or such other period as agreed to by the applicant and the Administrator.

(2) Any owner or operator who constructs, modifies, or operates a stationary source not in accordance with the application, as approved and conditioned by the Administrator, or any owner or operator of a stationary source subject to this paragraph who commences construction or modification after June 1, 1975, without applying for and receiving approval hereunder, shall be subject to enforcement action under section 113 of the Act.

(3) Approval to construct or modify shall become invalid if construction or expansion is not commenced within 18 months after receipt of such approval or if construction is discontinued for a period of 18 months or more. The Administrator may extend such time period upon a satisfactory showing that an extension is justified.

(4) Approval to construct or modify shall not relieve any owner or operator of the responsibility to comply with the control strategy and all local, State, and Federal regulations which are part of the applicable State Implementation Plan.

(f) Delegation of authority

(1) The Administrator shall have the authority to delegate responsibility for implementing the procedures for conducting source review pursuant to paragraphs (d) and (e), in accordance with subparagraphs (2), (3), and (4) of this paragraph.

(2) Where the Administrator delegates the responsibility for implementing the procedures for conducting source review pursuant to this section to any Agency, other than a regional office of the Environmental Protection Agency, the following provisions shall apply:

(i) Where the agency designated is not an air pollution control agency, such agency shall consult with the appropriate State and local air pollution control agency prior to making any determination required by paragraph (d) of this section. Similarly, where the agency designated does not have continuing responsibilities for managing land use, such agency shall consult with the appropriate State and local agency which is primarily responsible for managing land use prior to making any determination required by paragraph (d) of this section.

(ii) A copy of the notice pursuant to paragraph (e) (1) (ii) (c) of this section shall be sent to the Administrator through the appropriate regional office.

(3) In accordance with Executive Order 11752, the Administrator's authority for implementing the procedures for conducting source review pursuant to this section shall not be delegated, other than to a regional office of the Environmental Protection Agency, for new or modified sources which are owned or operated by the Federal government or for new or modified sources located on Federal lands; except that, with respect to the latter category, where new or modified sources are constructed or operated on Federal lands pursuant to leasing or other Federal agreements, the Federal land Manager may at his discretion, to the extent permissible under applicable statutes and regulations, require the lessee or permittee to be subject to a designated State or local agency's procedures developed pursuant to paragraphs (d) and (e) of this section.

(4) The Administrator's authority for implementing the procedures for conducting source review pursuant to this section shall not be redelegated, other than to a regional office of the Environmental Protection Agency, for new or modified sources which are located on Indian reservations except where the State has assumed jurisdiction over such land under other laws, in which case the Administrator may delegate his authority to the States in accordance with subparagraphs (2), (3), and (4) of this paragraph.

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